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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 DAVID SUMNER IV,

10 Plaintiff,

11 v.

12 ALLSTATE INSURANCE CORP, et  
al.,

13 Defendant.

CASE NO. 3:19-CV-6183-BHS-DWC

ORDER DISMISSING PLAINTIFF'S  
COMPLAINT WITHOUT PREJUDICE,  
GRANTING PLAINTIFF LEAVE TO  
AMEND, AND RENOTING  
PLAINTIFF'S MOTION TO PROCEED  
*IN FORMA PAUPERIS*

14 Plaintiff David Sumner, IV, proceeding *pro se*, filed this action alleging violations of his  
15 constitutional rights. *See* Dkt. 1-1. The District Court has referred Plaintiff's pending Application  
16 to Proceed *In Forma Pauperis* ("IFP") and Proposed Complaint to United States Magistrate  
17 Judge David W. Christel pursuant to Amended General Order 02-19.

18 Having reviewed and screened Plaintiff's Proposed Complaint under 28 U.S.C. §  
19 1915(e)(2), the Court finds Plaintiff has failed to state a claim. The Court dismisses Plaintiff's  
20 Proposed Complaint without prejudice, re-notes the pending Application to Proceed IFP, and  
21 provides Plaintiff leave to file an amended pleading by January 24, 2020, to cure the deficiencies  
22 identified herein.

23  
24 ORDER DISMISSING PLAINTIFF'S COMPLAINT  
WITHOUT PREJUDICE, GRANTING PLAINTIFF  
LEAVE TO AMEND, AND RENOTING  
PLAINTIFF'S MOTION TO PROCEED IN FORMA  
PAUPERIS - 1

1       **I.       Background**

2               Plaintiff alleges Defendants Allstate Insurance Company, Insurance Providers Inc., Mike  
3 Kreidler, Governor Jay Inslee, Dave Sumner, III, and Sharon Kay Sumner violated his  
4 constitutional rights. Dkt. 1-1. However, Plaintiff's Proposed Complaint contains no factual  
5 allegations. *See id.* Rather, Plaintiff states he will be filing complaint pleadings within 90 days.  
6 *See id.* at pp. 7, 9.

7       **II.       Discussion**

8               The district court may permit indigent litigants to proceed IFP upon completion of a  
9 proper affidavit of indigency. *See* 28 U.S.C. § 1915(a). However, the "privilege of pleading *in*  
10 *forma pauperis* . . . in civil actions for damages should be allowed only in exceptional  
11 circumstances." *Wilborn v. Escalderon*, 789 F.2d 1328 (9th Cir. 1986). The Court has broad  
12 discretion in denying an application to proceed IFP. *Weller v. Dickson*, 314 F.2d 598 (9th Cir.  
13 1963), *cert. denied* 375 U.S. 845 (1963).

14              Notwithstanding IFP status, the Court must subject each civil action commenced pursuant  
15 to 28 U.S.C. § 1915(a) to mandatory screening and order the *sua sponte* dismissal of any case  
16 that is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks  
17 monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B);  
18 *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001) ("[T]he provisions of 28 U.S.C. §  
19 1915(e)(2)(B) are not limited to prisoners."); *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir.  
20 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to *sua*  
21 *sponte* dismiss an IFP complaint that fails to state a claim). An IFP complaint is frivolous if "it  
22 ha[s] no arguable substance in law or fact." *Tripathi v. First Nat'l Bank & Trust*, 821 F.2d 1368,

1 1369 (9th Cir. 1987) (citing *Rizzo v. Dawson*, 778 F.2d 527, 529 (9th Cir. 1985); *see also*  
2 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984).

3 A *pro se* plaintiff's complaint is to be construed liberally, but like any other complaint it  
4 must nevertheless contain factual assertions sufficient to support a facially plausible claim for  
5 relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678, (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550  
6 U.S. 544, 570 (2007)). A claim for relief is facially plausible when "the plaintiff pleads factual  
7 content that allows the court to draw the reasonable inference that the defendant is liable for the  
8 misconduct alleged." *Iqbal*, 556 U.S. at 678.

9 Unless it is clear a *pro se* plaintiff cannot cure the deficiencies of a complaint, the Court  
10 will provide the *pro se* plaintiff with an opportunity to amend the complaint to state a plausible  
11 claim. *See United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011) ("Dismissal  
12 without leave to amend is improper unless it is clear, upon de novo review, that the complaint  
13 could not be saved by any amendment.").

14 Here, Plaintiff's Proposed Complaint suffers from deficiencies requiring dismissal if not  
15 corrected in an amended complaint. As stated above, the Court is required to liberally construe  
16 *pro se* documents. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). However, Federal Rule of  
17 Civil Procedure 8 requires a complaint to contain "a short and plain statement of the claim  
18 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a). "Each allegation must be  
19 simple, concise, and direct." Fed. R. Civ. P. 8(d). Plaintiff's Proposed Complaint contains no  
20 allegations against Defendants. Thus, his Proposed Complaint fails to state a claim upon which  
21 relief can be granted and dismissal is warranted. *See Iqbal*, 556 U.S. at 678 (2009) (a pleading  
22 must be more than an "unadorned, the-defendant-unlawfully-harmed-me accusation"); *see also*  
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1 *Twombly*, 550 U.S. at 545 (to state a claim for relief, “[f]actual allegations must be enough to  
2 raise a right to relief above the speculative level”).

3 The Court notes that to state a claim for relief under 42 U.S.C. § 1983, a plaintiff must  
4 show: (1) he suffered a violation of rights protected by the Constitution or created by federal  
5 statute, and (2) the violation was proximately caused by a person acting under color of state law.  
6 *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). The first step in a § 1983 claim is  
7 therefore to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510  
8 U.S. 266, 271 (1994). To satisfy the second prong, a plaintiff must allege facts showing how  
9 individually named defendants caused, or personally participated in causing, the harm alleged in  
10 the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).

### 11 **III. Instructions to Plaintiff and the Clerk**

12 Due to the deficiencies described above, the Court finds Plaintiff has failed to state a  
13 claim. Therefore, the Court dismisses Plaintiff’s Proposed Complaint without prejudice. If  
14 Plaintiff intends to pursue to this action, he must file an amended complaint on or before January  
15 24, 2020. The amended complaint will act as a complete substitute for any previously filed  
16 complaint, and not as a supplement. The Court will screen the amended complaint to determine  
17 whether it contains factual allegations linking each defendant to the alleged violations of  
18 Plaintiff’s rights. If Plaintiff fails to file an amended complaint or otherwise respond, the  
19 undersigned will recommend that the Application to Proceed IFP be denied and that the case be  
20 closed.

1 If Plaintiff submits an adequate complaint, the Court will consider the Application to  
2 Proceed IFP. The Clerk is directed to re-note the Application to Proceed IFP (Dkt. 1) for  
3 consideration on January 24, 2020.

4 Dated this 20th day of December, 2019.

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7 David W. Christel  
8 United States Magistrate Judge  
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